

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No.5701 of 2004

Date of Decision:- 17.10.2006

Baljinder Singh

....Petitioner

through
Mr.Malkeet Singh, Advocate

vs.

Sarabjit Kaur & ors.

....Respondents

through
Mr.Sandeep Jain, Advocate

CORAM:-HON'BLE MR.JUSTICE SURYA KANT

SURYA KANT, J.

This revision petition has been filed by one of the defendants, who was proceeded *ex parte* and his application to re-call the *ex parte* proceedings has also been dismissed by the learned Civil Judge (Sr.Div.), Nawanshahr vide the impugned order dated 14.10.2004.

Briefly stated, a suit for joint possession of 1/8th share in the land measuring 68 kanals 7 marlas situated within the revenue estate of Village Bharo Majra, Tehsil & District Nawanshahr, has been filed by the respondent-plaintiff. Five defendants including the petitioner have been arrayed in the suit and all of them are shown to be residents of Village Bharo Majra, Tehsil & District Nawanshahr. It appears that the petitioner instead of the aforesaid village, started living in Village Kesari Singhpur, District Sri Ganganagar, Rajasthan. Registered notices were sent to him on the above-stated address of Rajasthan also, which he refused to receive.

Thereafter, a notice appears to have been published in the newspaper and since he failed to appear despite that, the trial Court proceeded against him *ex-parte* vide order dated 28.2.2001. In the year 2003, the petitioner moved an application to set aside the *ex parte* proceedings, however, his application has since been dismissed by the learned trial Court vide the impugned order.

Notice of motion was issued subject to depositing of Rs.5,000/- towards litigation expenses in the present revision petition and while issuing notice of motion further proceedings before the trial Court were also stayed.

I have heard learned counsel for the parties and perused the impugned order.

From the memo of parties of the civil suit, it is apparent that the respondent-plaintiff is sister of the petitioner. The respondent's another brother and sisters are the petitioner's co-defendants. It appears that the petitioner's brother and sisters who are residing at Village Bharomajra were duly served whereas the petitioner kept on evading the service. It is difficult to believe that he was not aware of pendency of the suit, moreso when the registered notices were sent to him at his address of Village Kesari Singhpur, District Sri Ganganagar, Rajasthan and as per the report on those notices, he refused to receive them. In such a situation, normally no interference by this Court in the impugned order passed by the learned trial Court is called for. However, having regard to the fact that the suit pertains to a decree for joint possession of the land stated to be owned by all the brothers and sisters jointly, it appears desirable and in the interest of all of them that all of them are duly heard before the suit for joint possession or subsequent partition proceeding of the joint holding, are concluded. At the

same time, the petitioner's claim for setting aside *ex parte* proceedings against him at this belated stage, is also shrouded with an element of suspicion.

Consequently, in the peculiar facts and circumstances of this case and having regard to the *inter se* relationship of the parties, this revision petition is partly allowed and the impugned order dated 14.10.2004 passed by the learned Civil Judge (Sr.Division), Nawanshahr is set aside subject to the following modifications/directions:-

- (i)the petitioner shall be given one opportunity to file his written statement, if any. No other opportunity shall be granted to him in this regard;
- (ii)the petitioner shall not be entitled to get the plaintiff's witness recalled for cross-examination;
- (iii)the petitioner shall be given not more than two opportunities to lead his entire documentary and/or oral evidence at his own responsibility. He shall not be entitled to summon any witness through the process of the Court;
- (iv)the petitioner shall pay costs of Rs.25,000/- to the respondent-plaintiff which shall include Rs.5,000/- deposited by him in the Registry of this Court on November 23, 2004;
- (v)the petitioner shall also furnish adequate security for the mesne profits before the learned trial Court to its satisfaction for the period from the year 2001 onwards to the extent of 1/8th share of the total land i.e. approximately 8 kanals and 2 marlas within a period of one month from the date of receipt of copy of this order; and

(vi)while deciding the suit, the learned trial Court shall also
decide the issue of entitlement of the respondent-plaintiff for
mesne profits.

The trial Court shall also make an endeavour to dispose of the
suit as early as possible and preferably within six months.

Disposed of.

October 17, 2006
poonam

(SURYA KANT)
JUDGE